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EO 12812-2

Attorneys for Plaintiff
QUAIS AMIN

** Defendants' counsel listed after the caption*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

QUAIS AMIN,

Plaintiff,

v.

SJ OMOGARI KOREAN RESTAURANT;
JAMES DONLEE TURNER dba SJ
OMOGARI KOREAN RESTAURANT;
SUNNY LEE TURNER dba SJ OMOGARI
KOREAN RESTAURANT; TODD R.
FUJINAGA; DEBRA L. MASAMORI; and
DOES 1-10, Inclusive,

Defendants.

CASE NO. C12-6562 RMW

Civil Rights

**COURT-ENFORCEABLE SETTLEMENT
AGREEMENT AND ~~PROPOSED~~ ORDER**

JEFFER MANGELS BUTLER & MITCHELL LLP
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Attorneys for Defendants SJ OMOGARI KOREAN
RESTAURANT; JAMES DONLEE TURNER dba SJ OMOGARI
KOREAN RESTAURANT; SUNNY LEE TURNER dba SJ
OMOGARI KOREAN RESTAURANT
RAMSEY LAW GROUP

CT-ENFORCEABLE SETTLEMENT AGT AND
PROP ORDER Case No. C12-6562 RMW

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Attorneys for Defendants
 TODD R. FUJINAGA and
 DEBRA L. MASAMORI

1. Plaintiff QUAIS AMIN filed a Complaint in this action on December 28, 2012 to obtain recovery of damages for his alleged discriminatory experiences, denial of access, denial of his civil rights, and to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and California civil rights laws against Defendants SJ OMOGARI KOREAN RESTAURANT; JAMES DONLEE TURNER dba SJ OMOGARI KOREAN RESTAURANT; SUNNY LEE TURNER dba SJ OMOGARI KOREAN RESTAURANT; TODD R. FUJINAGA; DEBRA L. MASAMORI (all defendants sometimes referred to as "Defendants"), relating to the condition of Defendants' public accommodations as of September 26, 2012 and continuing (the "Action"). Plaintiff has alleged that Defendants violated Title III of the ADA and sections 51, 52, 54, 54.1, 54.3, and 55 of the California Civil Code, and sections 19955 et seq. of the California Health & Safety Code by failing to provide full and equal access to their facilities at 154 E. Jackson St., San Jose, California ("Premises").

2. Plaintiff and Defendants (together sometimes the "Parties") and the Released Parties¹ hereby enter into this Settlement Agreement and Order for the purpose of resolving this lawsuit in its entirety without the need for protracted litigation.

JURISDICTION:

3. The Parties to this Settlement Agreement and Order agree that the Court has jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations of the

¹ The "Released Parties" shall collectively include Defendants and their estates, trusts, trustees, executors, administrators, beneficiaries, licensees, lessors, lessees, sub-lessors, sub-lessees, employees, attorneys, agents, officers, directors, managers, members, shareholders, successors, predecessors, parents, subsidiaries, including, without limitation, divisions, affiliates, individuals, insurers and reinsurers.

1 Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 et seq. and pursuant to
 2 supplemental jurisdiction for alleged violations of California Health & Safety Code sections 19955
 3 et seq.; Title 24, California Code of Regulations; and California Civil Code sections 51, 52, 54,
 4 54.1, 54.3, and 55.

5 4. In order to avoid the costs, expense, and uncertainty of protracted litigation,
 6 the Parties to this Settlement Agreement and Order agree to entry of this Settlement Agreement and
 7 Order to resolve the Action in its entirety. Accordingly, the Parties agree to the entry of this Order
 8 without trial or further adjudication of any issues of fact or law.

9 WHEREFORE, the Parties to this Settlement Agreement hereby agree and stipulate
 10 to the Court's entry of this Order, which provides as follows:

11 **SETTLEMENT OF ALL CLAIMS:**

12 5. This Order shall be a full, complete, and final disposition and settlement of
 13 Plaintiff's claims in their entirety against Defendants, and each of them, that have arisen out of, or
 14 which could have been alleged in, the subject Complaint.

15 **6. Remedial Work:**

16 (a) The Parties agree and stipulate that the remedial work will be performed in
 17 compliance with the standards and specifications for disabled access as set forth in the California
 18 Code of Regulations, Title 24-2, and the Americans with Disabilities Act Standards for Accessible
 19 Design, unless other standards are specifically agreed to in this Settlement Agreement and Order.

20 (b) **Remedial Measures:** The remedial work agreed upon by the Parties is set
 21 forth in Attachment A (a draft report by Plaintiff's access consultant, Jonathan Adler) and
 22 Attachment B (plans for the proposed restroom remediation or equivalent compliant work).
 23 Attachments A and B are attached and incorporated herewith. Defendants represent that they have
 24 already completed items A, B of Attachment A in compliance with paragraph 6(a).

25 (c) **Timing of Injunctive Relief:** Defendants will submit plans for all bathroom
 26 remedial work requiring permits to the appropriate governmental agencies by October 31, 2013.
 27 Defendants will commence work on said bathroom within 45 days of receiving approval from the
 28 appropriate agencies. Defendants will complete all remedial work by June 30, 2014. In the event

1 that unforeseen difficulties prevent Defendants from completing any of the agreed-upon injunctive
 2 relief, Defendants or their counsel will notify Plaintiff's counsel in writing within 5 days of
 3 discovering the delay. Plaintiff will have thirty (30) days to investigate and meet and confer, and to
 4 approve the delay by stipulation or otherwise respond to Defendants' notice. If the Parties cannot
 5 reach agreement regarding the delay within an additional 15 days, either Party may seek specific
 6 performance of this Order by the Court as their sole remedy. Defendants or their counsel will
 7 notify Plaintiff's counsel when the corrective work is completed, and in any case will provide a
 8 status report to Plaintiff's counsel no later than June 30, 2014.

9 (d) If Defendants fail to provide injunctive relief on the agreed upon timetable,
 10 and Plaintiff files a motion with the Court to obtain specific performance of these terms, each of the
 11 Parties reserve the right to seek additional attorneys' fees for any non-compliance work necessitated
 12 by Defendants' failure to keep this Agreement or Plaintiff's failure to keep this Agreement. If the
 13 Parties disagree on the entitlement to, the reasonableness or the amount thereof, such fees shall be
 14 set by the Court.

15 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, COSTS AND RELEASES:**

16 7. The Parties have agreed to settle Plaintiff's damage claims for the sum total of
 17 Fifteen Thousand and No/100s (\$15,000.00) Dollars, as well as Plaintiff's claims for attorneys' fees,
 18 litigation expenses, and costs in the amount of Thirty-Five Thousand and No/100s (\$35,000.00)
 19 Dollars ("Settlement Payment") payable within 10 days of the Effective Date of this Agreement (as
 20 defined below). The Settlement Payment shall be in the form of a check made payable to the Law
 21 Offices of Paul L. Rein, Trust Account, Federal Tax Identification Number _____. Plaintiff's
 22 counsel shall also deliver to Mr. Orlick a signed original IRS W9 Form for the Law Offices of Paul
 23 L. Rein

24 (a) In consideration for the Settlement Payment, the terms, conditions, covenants
 25 and promises contained within this Agreement, and other valuable consideration, the receipt and
 26 sufficiency of which Plaintiff expressly acknowledges, Plaintiff, and those acting on Plaintiff's
 27 behalf (including attorneys, heirs, beneficiaries, executors, trustees, administrators, successors,
 28 agents and assigns), shall forever release Defendants and the Released Parties from any and all

1 Claims, including the claims contained in the Action and claims for acts or omissions, currently
 2 known or unknown, foreseeable or unforeseeable, alleged, or which could have been alleged, in this
 3 and any other court or administrative proceeding relating to the Premises, including, without
 4 limitation, any and all damages.

5 (b) The releases contained in this Agreement expressly exclude the terms and
 6 covenants set forth herein, including the Defendants' obligations arising under this Agreement to
 7 renovate the Premises as set forth in Attachments A and B.

8 (c) Examples of Claims released include, but are not limited to, damages of any
 9 nature or in any amount whatsoever, statutory damages, physical injuries, emotional or mental
 10 injury, pain and suffering, prejudgment interest, compensatory damages, consequential damages,
 11 punitive and exemplary damages, insurance and/or reinsurance coverage, benefits, premiums, or
 12 medical expenses for treatment Plaintiff may have received, or may receive in the future, attorneys'
 13 fees, expert fees, litigation costs and expenses of every kind and in every amount ("Claims"). This
 14 list is not exhaustive.

15 Defendants agree to make or maintain modifications to the Premises as outlined in
 16 Attachments A and B such that they are in compliance with the new construction standards set forth
 17 in the 2010 Americans with Disabilities Act Standards for Accessible Design and California Code
 18 of Regulations, Title 24, Part 2, 2010 California Building Code, and to make these changes within
 19 twelve (12) months of the Effective Date of this Agreement, subject to delays due to Force Majeure
 20 as defined in Paragraph 8 below ("Modification Period").

21 8. Force Majeure. The Modification Period shall be extended for periods of
 22 time during which Defendants' performance is prevented or delayed due to any circumstances
 23 beyond their reasonable control. Such extensions include, without limitation, delays due to strikes,
 24 riots, embargoes, governmental action, acts of God, war, or other strife, or the inability to obtain, or
 25 governmental delays in obtaining permits or other approvals, regulations or restrictions or any other
 26 causes of any kind whatsoever which are beyond Defendants' reasonable control.

27 ///

28 ///

1 **ENTIRE SETTLEMENT AGREEMENT AND ORDER:**

2 9. This Settlement Agreement and Order and Attachments A and B constitute
3 the entire agreement between the signing Parties and no other statement, promise, or agreement,
4 either written or oral, made by any of the Parties or agents of any of the Parties that is not contained
5 in this written Settlement Agreement and Order, shall be enforceable regarding the matters
6 described herein.

7 **SETTLEMENT AGREEMENT AND ORDER BINDING ON PARTIES AND**
8 **SUCCESSORS- IN-INTEREST:**

9 10. This Settlement Agreement and Order shall be binding on Plaintiff,
10 Defendants, and any successors-in-interest. Defendants have a duty to so notify all such successors-
11 in-interest of the existence and terms of this Settlement Agreement and Order during the period of
12 the Court's jurisdiction of this Settlement Agreement and Order.

13 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**

14 11. Each of the Parties to this Settlement Agreement understands and agrees that
15 there is a risk and possibility that, subsequent to the execution of this Settlement Agreement and
16 Order, any or all of them will incur, suffer, or experience some further loss or damage with respect
17 to the lawsuit that is unknown or unanticipated at the time this Settlement Agreement and Order is
18 signed. Except for all obligations required in this Settlement Agreement and Order, the Parties
19 intend that this Settlement Agreement and Order apply to all such further loss with respect to the
20 lawsuit, except those caused by the Parties subsequent to the execution of this Settlement
21 Agreement and Order. Therefore, except for all obligations required in this Settlement Agreement
22 and Order, this Settlement Agreement and Order shall apply to and cover any and all Claims,
23 demands, actions, and causes of action by the Parties to this Settlement Agreement with respect to
24 the lawsuit, or which could have been alleged in the lawsuit, whether the same are known,
25 unknown, foreseeable or unforeseeable, or hereafter discovered or ascertained, and the provisions of
26 Section 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as
27 follows:

28 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**

1 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
 2 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
 3 **OR HER MUST HAVE MATERIALLY AFFECTED HIS**
 4 **SETTLEMENT WITH THE DEBTOR.**

5 12. Except for all obligations required in this Settlement Agreement and Order,
 6 each of the Parties to this Settlement Agreement and Order on behalf of each, their respective
 7 agents, representatives, predecessors, successors, heirs, partners, and assigns, releases and forever
 8 discharges each other Party and all officers, directors, shareholders, members, subsidiaries, joint
 9 venturers, stockholders, partners, parent companies, affiliates, employees, agents, attorneys,
 10 insurance carriers, heirs, predecessors, and representatives of each other Party, from all Claims,
 11 demands, actions, and causes of action of whatever kind or nature, presently known or unknown,
 12 foreseeable or unforeseeable, arising out of or in any way connected with the lawsuit.
 13 Notwithstanding the foregoing, the Defendants do not waive or release, but instead explicitly
 14 preserve, their rights to seek contribution, apportionment, indemnification, and all other appropriate
 15 relief from each other in connection with this lawsuit and settlement thereof.

16 **TERM OF THE SETTLEMENT AGREEMENT AND ORDER:**

17 13. This Settlement Agreement and Order shall be in full force and effect -- and
 18 the Court shall retain jurisdiction of this action to enforce provisions of this Settlement Agreement
 19 and Order until July 31, 2014 or until the injunctive relief contemplated by this Order is completed,
 20 whichever occurs later.

21 **WARRANTIES:**

22 14. Capacity of the Parties. Each Party represents and warrants that he/she or it
 23 has the full power, capacity, and authority to enter into this Settlement Agreement and Order, and
 24 no injunctive relief or damage claim or cause of action relating to the property at issue was assigned
 25 to any person who, or entity which is not a Party to this Settlement Agreement and Order. Further
 26 settlement agreements are not necessary to complete the settlement of the Claims raised in or which
 27 could have been raised in the lawsuit.

28 15. Binding on Parties. The Parties agree that if the facts upon which this
 Settlement Agreement and Order are based, are found to be different from the facts now believed to

1 be true, this Settlement Agreement and Order will nevertheless remain binding and fully effective.

2 16. Voluntary Action by Parties. The Parties enter into this Settlement
3 Agreement and Order knowingly and voluntarily, in order to avoid the expense and uncertainty of
4 continued litigation.

5 **DENIAL OF LIABILITY:**

6 17. Denial of Liability. Defendants, and each of them, deny all allegations
7 contained in, or which could have been contained within the lawsuit. The Parties expressly
8 represent, understand, and assent that this Settlement Agreement and Order is a compromise of
9 disputed claims, and shall not be construed as an admission of liability against Defendants, or any
10 of them. Nor shall any acts, omissions, or statements by the Parties in connection with the lawsuit,
11 negotiating or executing this Settlement Agreement and Order, be construed as an admission of
12 liability. Nothing contained in this Agreement shall be admissible evidence in any judicial,
13 administrative, or other legal proceeding (other than as a defense to any future action as to the
14 property or any proceeding to enforce this Settlement Agreement and Order), except that Exhibits A
15 and B, the fact of alterations, their scope, date and location, shall be admissible.

16 **GENERAL PROVISIONS:**

17 18. Entire Agreement. This Agreement constitutes the entire agreement between
18 the Parties hereto with respect to all of the matters discussed herein, and supersedes all prior
19 contemporaneous discussions, communications, or agreements, expressed or implied, written or
20 oral, by or between the Parties.

21 19. Governing Law. This Agreement shall be interpreted and governed
22 according to the laws of the United States and the State of California.

23 20. Binding on Successors. The provisions of the Settlement Agreement and
24 Order shall be binding upon, and shall inure to the benefit of the successors, assigns, heirs, trustees,
25 executors, and administrators of the respective Parties.

26 21. Entitlement to Damage Settlement. Plaintiff and his counsel expressly
27 warrant and represent, and Defendants are relying thereon, that no counsel (other than the Law
28 Offices of Paul L. Rein) or person, other than Plaintiff, is entitled to the Settlement Payment, or any

1 portion thereof, and if this representation proves to be false, then Plaintiff agrees to indemnify and
2 hold harmless Defendants for their attorneys' fees, expert fees and litigation costs incurred in
3 defending the claim(s) of any third-party making a claim to any portion of the Settlement Payments,
4 including those amounts incurred by Defendants in connection with enforcing this provision.

5 22. No Amendment Without a Writing. The Parties agree this Settlement
6 Agreement and Order shall not be amended, unless that amendment is made in writing and signed
7 by each Party.

8 23. Waiver. The waiver of a breach of this Settlement Agreement and Order
9 shall not be construed as a waiver of any subsequent breach.

10 24. Severability. If any provision of this Settlement Agreement and Order is held
11 by a court of competent jurisdiction to be void, voidable, unlawful, or unenforceable for any reason,
12 in whole or in part, the remaining portions of this Settlement Agreement and Order will
13 nevertheless continue with full force and effect, and the Parties agree a court of competent
14 jurisdiction will have jurisdiction to reform such provision(s) to the extent necessary to cause it to
15 give maximum legal effect to the intention of the Parties as expressed herein and the Parties agree to
16 be bound by such reformation.

17 25. Effective Date. This Settlement Agreement and Order shall become effective
18 and enforceable on the date executed by Plaintiff and delivered to each of Defendants' counsel of
19 record in the lawsuit.

20 26. Cooperation. Each Party, without further consideration, and upon request of
21 any other Party, agrees to execute and deliver such other documents and to take such other action as
22 may be necessary or appropriate to give full force and effect to the terms and intent of this
23 Settlement Agreement and Order.

24 27. Counterparts and Delivery of Signatures by Facsimile or PDF. This
25 Settlement Agreement and Order may be executed in counterparts, which, when counterparts have
26 been executed by all of the Parties, shall constitute this Settlement Agreement and Order. This
27 Settlement Agreement and Order may also be signed and delivered via facsimile transmission, or
28 electronically via PDF and such facsimile or PDF documents shall be deemed originals and binding

1 upon the signatories upon receipt by the party to whom the facsimile or other electronic
2 transmission is sent. The "hard copies" of such documents bearing the original signatures of such
3 signatories shall be sent via first class mail on the same day as the facsimile or other electronic
4 transmission.

5
6 **END OF PAGE.**
7 **SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT THE**
8 **END OF THE DOCUMENT.**
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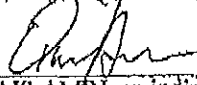
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IN WITNESS THEREOF, the Parties have executed this Settlement Agreement and
Order as of the dates specified below.

Dated: Sept 22, 2013

PLAINTIFF QUAIS AMIN


 QUAIS AMIN, an individual
Dated: Sept 19, 2013

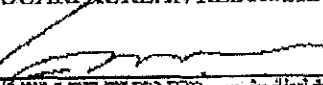
DEFENDANT SJ OMOGARI KOREAN RESTAURANT

By: James TurnerPrint name: James TurnerTitle: OwnerDated: Sept 19, 2013

DEFENDANT JAMES DONLEE TURNER dba SJ OMOGARI KOREAN RESTAURANT


 JAMES DONLEE TURNER, an individual
Dated: Sept 19, 2013

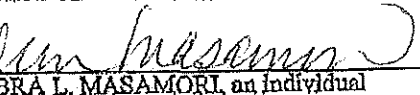
DEFENDANT SUNNY LEE TURNER dba SJ OMOGARI KOREAN RESTAURANT


 SUNNY LEE TURNER, an individual
Dated: Sept 26, 2013

DEFENDANT TODD R. FUJINAGA


 TODD R. FUJINAGA, an individual
Dated: Sept 26, 2013


DEFENDANT DEBRA L. MASAMORI


 DEBRA L. MASAMORI, an individual

1 APPROVED AS TO FORM:

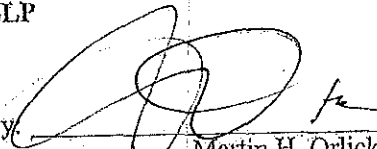
2 Dated: September 23, 2013

LAW OFFICES OF PAUL L. REIN

3 By: 
4 Celia McGuinness, Esq.
5 Attorney for Plaintiff
6 QUAIS AMIN

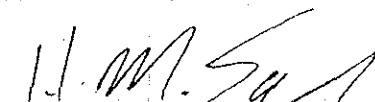
7 Dated: October 7, 2013

JETTER MANGELS BUTLER & MITCHELL
LLP

8 By: 
9 Martin H. Orlick, Esq.
10 Attorneys for Defendants
11 SJ OMOGARI KOREAN RESTAURANT;
12 JAMES DONLEE TURNER DBA SJ OMOGARI
13 KOREAN RESTAURANT; SUNNY LEE TURNER
14 DBA SJ OMOGARI KOREAN RESTAURANT

15 Dated: September 27, 2013

RAMSEY LAW GROUP

16 By: 
17 Hussein Saffouti, Esq.
18 Attorneys for Defendants
19 TODD R. FUJINAGA and DEBRA L. MASAMORI

20 ORDER

21 Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

22 Dated: FFBI, 2013

23 
24 Honorable Ronald M. Whyte
25 United States District Court Judge